

Message Text

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C O N F I D E N T I A L MADRID 3724

E.O. 11652: GDS

TAGS: MILI, SP

SUBJ: OFFICIAL DUTY IN HOME TO WORK CASES

REF: STATE 065578

1. PERMANENT SECRETARIAT OF JOINT COMMITTEE ON DEFENSE
MATTERS HAS AGREED ON FOLLOWING INFORMAL UNDERSTANDING
GOVERNING CERTIFICATION OF OFFICIAL DUTY STATUS IN
"HOME-TO-WORK" CASES.

A. U.S. WILL REFRAIN FROM CERTIFYING AS OFFICIAL
DUTY ANY HOME-TO-WORK CASE INVOLVING DEATH OF SPANIARD.

B. ALL OTHER HOME-TO-WORK CASES WILL CONTINUE TO
BE CERTIFIED BY U.S. AS OFFICIAL DUTY FOR CRIMINAL
JURISDICTION PURPOSES, BUT NOT FOR CLAIMS PURPOSES.

C. GOS WILL RECOGNIZE THESE OFFICIAL DUTY
CERTIFICATIONS WITH EXCEPTION OF WHAT ARE DETERMINED TO
BE "SERIOUS" HOME-TO-WORK CASES. DECISIONS AS TO WHAT
CONSTITUTES "SERIOUS" HOWEVER, WILL BE WORKED OUT BI-
LATERALLY WITHIN THE PERMANENT SECRETARIAT, ON A CASE-BY-
CASE BASIS.

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2. EMBASSY BELIEVES FOREGOING REPRESENTS SATISFACTORY

COMPROMISE ARRANGEMENT. WHILE GOS HAS BEEN WILLING TO
ACCEPT GENERAL PRINCIPLE OF U.S. JURISDICTION
IN HOME-TO-WORK CASES, IT HAS CONTINUED TO INSIST
THAT EXCEPTIONS INCLUDE SERIOUS INJURY CASES (E.G.,
SERIOUS DISABILITY) ALONG WITH THOSE INVOLVING DEATH.
AT SAME TIME, SPANISH RECOGNIZED OUR POSITION THAT BROAD
INTERPRETATION ON THEIR PART AS TO WHAT CONSTITUTED
"SERIOUS" COULD RENDER UNDERSTANDING ON JURISDICTION
MEANINGLESS, RESULTING IN APPRECIATION OF PROCEDURES
ALREADY IN EFFECT FOR NON-DUTY CASES, AND ULTIMATELY
PROVIDE SPANISH UNILATERAL AUTHORITY OVER ALL
HOME-TO-WORK CASES IT CONSIDERED SERIOUS FOR WHATEVER
REASON. HENCE PROCEDURES CALL FOR BOTH SIDES TO PARTICIPATE
IN MAKING DETERMINATION IN CASES WHERE QUESTION OF SERIOUS
INJURY IS RAISED.
AXELROD

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